

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Aug 24, 2021

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

PAULINA P.,¹

Plaintiff,

vs.

KILOLO KIJAKAZI, ACTING
COMMISSIONER OF SOCIAL
SECURITY,²

Defendant.

No. 2:20-cv-00325-MKD

ORDER DENYING PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT AND GRANTING
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT

ECF Nos. 16, 18

¹ To protect the privacy of plaintiffs in social security cases, the undersigned
identifies them by only their first names and the initial of their last names. *See*
LCivR 5.2(c).

² Kilolo Kijakazi became the Acting Commissioner of Social Security on July 9,
2021. Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, Kilolo
Kijakazi is substituted for Andrew M. Saul as the defendant in this suit. No further
action need be taken to continue this suit. *See* 42 U.S.C. § 405(g).

ORDER - 1

1 Before the Court are the parties' cross-motions for summary judgment. ECF
2 Nos. 16, 18. The parties consented to proceed before a magistrate judge. ECF No.
3 5. The Court, having reviewed the administrative record and the parties' briefing,
4 is fully informed. For the reasons discussed below, the Court denies Plaintiff's
5 motion, ECF No. 16, and denies Defendant's motion, ECF No. 18.

6 **JURISDICTION**

7 The Court has jurisdiction over this case pursuant to 42 U.S.C. §§ 405(g);
8 1383(c)(3).

9 **STANDARD OF REVIEW**

10 A district court's review of a final decision of the Commissioner of Social
11 Security is governed by 42 U.S.C. § 405(g). The scope of review under § 405(g) is
12 limited; the Commissioner's decision will be disturbed "only if it is not supported
13 by substantial evidence or is based on legal error." *Hill v. Astrue*, 698 F.3d 1153,
14 1158 (9th Cir. 2012). "Substantial evidence" means "relevant evidence that a
15 reasonable mind might accept as adequate to support a conclusion." *Id.* at 1159
16 (quotation and citation omitted). Stated differently, substantial evidence equates to
17 "more than a mere scintilla[,] but less than a preponderance." *Id.* (quotation and
18 citation omitted). In determining whether the standard has been satisfied, a
19 reviewing court must consider the entire record as a whole rather than searching
20 for supporting evidence in isolation. *Id.*

1 In reviewing a denial of benefits, a district court may not substitute its
2 judgment for that of the Commissioner. *Edlund v. Massanari*, 253 F.3d 1152,
3 1156 (9th Cir. 2001). If the evidence in the record “is susceptible to more than one
4 rational interpretation, [the court] must uphold the ALJ’s findings if they are
5 supported by inferences reasonably drawn from the record.” *Molina v. Astrue*, 674
6 F.3d 1104, 1111 (9th Cir. 2012). Further, a district court “may not reverse an
7 ALJ’s decision on account of an error that is harmless.” *Id.* An error is harmless
8 “where it is inconsequential to the [ALJ’s] ultimate nondisability determination.”
9 *Id.* at 1115 (quotation and citation omitted). The party appealing the ALJ’s
10 decision generally bears the burden of establishing that it was harmed. *Shinseki v.*
11 *Sanders*, 556 U.S. 396, 409-10 (2009).

12 FIVE-STEP EVALUATION PROCESS

13 A claimant must satisfy two conditions to be considered “disabled” within
14 the meaning of the Social Security Act. First, the claimant must be “unable to
15 engage in any substantial gainful activity by reason of any medically determinable
16 physical or mental impairment which can be expected to result in death or which
17 has lasted or can be expected to last for a continuous period of not less than twelve
18 months.” 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). Second, the claimant’s
19 impairment must be “of such severity that he is not only unable to do his previous
20 work[,] but cannot, considering his age, education, and work experience, engage in

1 any other kind of substantial gainful work which exists in the national economy.”
2 42 U.S.C. §§ 423(d)(2)(A), 1382c(a)(3)(B).

3 The Commissioner has established a five-step sequential analysis to
4 determine whether a claimant satisfies the above criteria. *See* 20 C.F.R. §§
5 404.1520(a)(4)(i)-(v), 416.920(a)(4)(i)-(v). At step one, the Commissioner
6 considers the claimant’s work activity. 20 C.F.R. §§ 404.1520(a)(4)(i),
7 416.920(a)(4)(i). If the claimant is engaged in “substantial gainful activity,” the
8 Commissioner must find that the claimant is not disabled. 20 C.F.R. §§
9 404.1520(b), 416.920(b).

10 If the claimant is not engaged in substantial gainful activity, the analysis
11 proceeds to step two. At this step, the Commissioner considers the severity of the
12 claimant’s impairment. 20 C.F.R. §§ 404.1520(a)(4)(ii), 416.920(a)(4)(ii). If the
13 claimant suffers from “any impairment or combination of impairments which
14 significantly limits [his or her] physical or mental ability to do basic work
15 activities,” the analysis proceeds to step three. 20 C.F.R. §§ 404.1520(c),
16 416.920(c). If the claimant’s impairment does not satisfy this severity threshold,
17 however, the Commissioner must find that the claimant is not disabled. *Id.*

18 At step three, the Commissioner compares the claimant’s impairment to
19 severe impairments recognized by the Commissioner to be so severe as to preclude
20 a person from engaging in substantial gainful activity. 20 C.F.R. §§

1 404.1520(a)(4)(iii), 416.920(a)(4)(iii). If the impairment is as severe or more
2 severe than one of the enumerated impairments, the Commissioner must find the
3 claimant disabled and award benefits. 20 C.F.R. §§ 404.1520(d), 416.920(d).

4 If the severity of the claimant's impairment does not meet or exceed the
5 severity of the enumerated impairments, the Commissioner must pause to assess
6 the claimant's "residual functional capacity." Residual functional capacity (RFC),
7 defined generally as the claimant's ability to perform physical and mental work
8 activities on a sustained basis despite his or her limitations, 20 C.F.R. §§
9 404.1545(a)(1), 416.945(a)(1), is relevant to both the fourth and fifth steps of the
10 analysis.

11 At step four, the Commissioner considers whether, in view of the claimant's
12 RFC, the claimant is capable of performing work that he or she has performed in
13 the past (past relevant work). 20 C.F.R. §§ 404.1520(a)(4)(iv), 416.920(a)(4)(iv).
14 If the claimant is capable of performing past relevant work, the Commissioner
15 must find that the claimant is not disabled. 20 C.F.R. §§ 404.1520(f), 416.920(f).
16 If the claimant is incapable of performing such work, the analysis proceeds to step
17 five.

18 At step five, the Commissioner considers whether, in view of the claimant's
19 RFC, the claimant is capable of performing other work in the national economy.
20 20 C.F.R. §§ 404.1520(a)(4)(v), 416.920(a)(4)(v). In making this determination,

1 the Commissioner must also consider vocational factors such as the claimant's age,
2 education, and past work experience. 20 C.F.R. §§ 404.1520(a)(4)(v),
3 416.920(a)(4)(v). If the claimant is capable of adjusting to other work, the
4 Commissioner must find that the claimant is not disabled. 20 C.F.R. §§
5 404.1520(g)(1), 416.920(g)(1). If the claimant is not capable of adjusting to other
6 work, analysis concludes with a finding that the claimant is disabled and is
7 therefore entitled to benefits. *Id.*

8 The claimant bears the burden of proof at steps one through four above.

9 *Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999). If the analysis proceeds to
10 step five, the burden shifts to the Commissioner to establish that 1) the claimant is
11 capable of performing other work; and 2) such work "exists in significant numbers
12 in the national economy." 20 C.F.R. §§ 404.1560(c)(2), 416.960(c)(2); *Beltran v.*
13 *Astrue*, 700 F.3d 386, 389 (9th Cir. 2012).

14 **ALJ'S FINDINGS**

15 On January 26, 2018, Plaintiff applied both for Title II disability insurance
16 benefits and Title XVI supplemental security income benefits alleging a disability
17 onset date of August 3, 2017. Tr. 18, 76-77, 213-25. The applications were denied
18 initially and on reconsideration. Tr. 136-39, 143-48. Plaintiff appeared before an
19 administrative law judge (ALJ) on February 11, 2020. Tr. 37-75. On February 26,
20 2020, the ALJ denied Plaintiff's claim. Tr. 15-36.

1 At step one of the sequential evaluation process, the ALJ found Plaintiff,
2 who met the insured status requirements through December 31, 2022, has not
3 engaged in substantial gainful activity since August 3, 2017. Tr. 20-21. At step
4 two, the ALJ found that Plaintiff has the following severe impairments: Wernicke-
5 Korsakoff syndrome secondary to alcohol abuse, mild alcohol-induced peripheral
6 neuropathy, and neurocognitive deficits secondary to Wernicke-Korsakoff. Tr. 21.

7 At step three, the ALJ found Plaintiff does not have an impairment or
8 combination of impairments that meets or medically equals the severity of a listed
9 impairment. *Id.* The ALJ then concluded that Plaintiff has the RFC to perform
10 light work with the following limitations:

11 [S]tanding/walking is limited to two hours per day so she would need
12 the ability to alternate positions at will to accommodate the two hour
13 maximum limit. She would be further limited to occasional climbing
14 of ramps and stairs, but no climbing of ladders, ropes, or scaffolds.
15 She can occasionally balance. She must avoid hazards. She is able to
16 understand, remember, and carry out very simple, routine, and
17 repetitive tasks and instructions in a predictable environment with
18 seldom change. She cannot perform tasks involving judgment or
19 decision-making or fast-paced production work. She can have only
20 brief, tangential contact with the public and superficial interaction
- with co-workers (superficial is defined as non-collaborative with no
tandem tasks).

Tr. 23.

At step four, the ALJ found Plaintiff is unable to perform any of her past
relevant work. Tr. 28. At step five, the ALJ found that, considering Plaintiff's
age, education, work experience, RFC, and testimony from the vocational expert,

1 there were jobs that existed in significant numbers in the national economy that
2 Plaintiff could perform, such as mail clerk, parking lot attendant, and assembler.
3 Tr. 29. Therefore, the ALJ concluded Plaintiff was not under a disability, as
4 defined in the Social Security Act, from the alleged onset date of August 3, 2017,
5 through the date of the decision. *Id.*

6 On July 29, 2020, the Appeals Council denied review of the ALJ's decision,
7 Tr. 1-6, making the ALJ's decision the Commissioner's final decision for purposes
8 of judicial review. *See* 42 U.S.C. § 1383(c)(3).

9 ISSUES

10 Plaintiff seeks judicial review of the Commissioner's final decision denying
11 her disability insurance benefits under Title II and supplemental security income
12 benefits under Title XVI of the Social Security Act. Plaintiff raises the following
13 issues for review:

14 1. Whether the ALJ properly evaluated Plaintiff's symptom claims; and
15 2. Whether the ALJ properly accounted for Plaintiff's limitations in the
16 RFC.³

17
18 ³ Plaintiff lists two additional issues, arguing that the ALJ erred in posing an
19 incomplete hypothetical to the vocational expert, and in finding Plaintiff capable of
20 substantial gainful activity at step five. ECF No. 16 at 12. However, Plaintiff only

1 ECF No. 16 at 12.

2 **DISCUSSION**

3 **A. Plaintiff's Symptom Claims**

4 Plaintiff faults the ALJ for failing to rely on reasons that were clear and
5 convincing in discrediting her symptom claims. ECF No. 16 at 14-16. An ALJ
6 engages in a two-step analysis to determine whether to discount a claimant's
7 testimony regarding subjective symptoms. SSR 16-3p, 2016 WL 1119029, at *2.
8 "First, the ALJ must determine whether there is objective medical evidence of an
9 underlying impairment which could reasonably be expected to produce the pain or
10 other symptoms alleged." *Molina*, 674 F.3d at 1112 (quotation marks omitted).
11 "The claimant is not required to show that [the claimant's] impairment could
12 reasonably be expected to cause the severity of the symptom [the claimant] has
13 alleged; [the claimant] need only show that it could reasonably have caused some
14 degree of the symptom." *Vasquez v. Astrue*, 572 F.3d 586, 591 (9th Cir. 2009).

15 Second, "[i]f the claimant meets the first test and there is no evidence of
16 malingering, the ALJ can only reject the claimant's testimony about the severity of
17 the symptoms if [the ALJ] gives 'specific, clear and convincing reasons' for the

18 _____
19 addresses these issues within her argument regarding the ALJ's RFC findings; as
20 such, the Court addresses all three issues within the RFC section.

1 rejection.” *Ghanim v. Colvin*, 763 F.3d 1154, 1163 (9th Cir. 2014) (citations
2 omitted). General findings are insufficient; rather, the ALJ must identify what
3 symptom claims are being discounted and what evidence undermines these claims.
4 *Id.* (quoting *Lester*, 81 F.3d at 834; *Thomas v. Barnhart*, 278 F.3d 947, 958 (9th
5 Cir. 2002) (requiring the ALJ to sufficiently explain why it discounted claimant’s
6 symptom claims)). “The clear and convincing [evidence] standard is the most
7 demanding required in Social Security cases.” *Garrison v. Colvin*, 759 F.3d 995,
8 1015 (9th Cir. 2014) (quoting *Moore v. Comm’r of Soc. Sec. Admin.*, 278 F.3d 920,
9 924 (9th Cir. 2002)).

10 Factors to be considered in evaluating the intensity, persistence, and limiting
11 effects of a claimant’s symptoms include: 1) daily activities; 2) the location,
12 duration, frequency, and intensity of pain or other symptoms; 3) factors that
13 precipitate and aggravate the symptoms; 4) the type, dosage, effectiveness, and
14 side effects of any medication an individual takes or has taken to alleviate pain or
15 other symptoms; 5) treatment, other than medication, an individual receives or has
16 received for relief of pain or other symptoms; 6) any measures other than treatment
17 an individual uses or has used to relieve pain or other symptoms; and 7) any other
18 factors concerning an individual’s functional limitations and restrictions due to
19 pain or other symptoms. SSR 16-3p, 2016 WL 1119029, at *7; 20 C.F.R. §§
20 404.1529(c), 416.929(c). The ALJ is instructed to “consider all of the evidence in

1 an individual's record," to "determine how symptoms limit ability to perform
2 work-related activities." SSR 16-3p, 2016 WL 1119029, at *2.

3 The ALJ found that Plaintiff's medically determinable impairments could
4 reasonably be expected to cause some of the alleged symptoms, but that Plaintiff's
5 statements concerning the intensity, persistence, and limiting effects of her
6 symptoms were not entirely consistent with the evidence. Tr. 24.

7 *1. Improvement with Treatment*

8 The ALJ found Plaintiff's symptom complaints were inconsistent with her
9 improvement with treatment. Tr. 24-25. The effectiveness of treatment is a
10 relevant factor in determining the severity of a claimant's symptoms. 20 C.F.R. §§
11 404.1529(c)(3), 416.929(c)(3) (2011); *Warre v. Comm'r of Soc. Sec. Admin.*, 439
12 F.3d 1001, 1006 (9th Cir. 2006) (determining that conditions effectively controlled
13 with medication are not disabling for purposes of determining eligibility for
14 benefits); *Tommasetti v. Astrue*, 533 F.3d 1035, 1040 (9th Cir. 2008) (recognizing
15 that a favorable response to treatment can undermine a claimant's complaints of
16 debilitating pain or other severe limitations).

17 The ALJ found Plaintiff's neuropathy symptoms improved with treatment.
18 Tr. 24-25. Plaintiff reported the symptoms started in 2016 but had resolved within
19 a few weeks, and returned in May 2017, with increased in severity by June 2017;
20 on examination, Plaintiff had weakness in her upper and lower extremities. Tr.

1 1061, 1074-76. In July 2017, a provider noted Plaintiff's neuropathy was
2 improved with medication, her moderate balance disturbance had improved
3 remarkably, and her gait and motor systems were well-preserved. Tr. 24 (citing Tr.
4 1083). Plaintiff was prescribed a cane, but she reported no longer needing it as she
5 had been walking normally for two weeks by July 6, 2017. Tr. 1079. While
6 hospitalized in August 2017, Plaintiff required the use of a walker. Tr. 351. In
7 October 2017, Plaintiff continued to use a walker, and had a slow, unsteady, and
8 methodical gait, and pain with palpation in her hands. Tr. 1110-11. In November
9 2017, Plaintiff was no longer using a walker for ambulation and was able to pick
10 her feet up better, though she still had a wide, somewhat shuffled gait, and
11 occasionally used the wall for balance. Tr. 24 (citing Tr. 1122). Plaintiff had no
12 focal deficits, improved coordination and strength. Tr. 1122.

13 By March 2018, the records noted Plaintiff had slow progressive
14 improvement in her symptoms, and although she had a mildly off-balance gait, her
15 sensory examination was improved, Tr. 24, 1153-54, and in September 2018,
16 Plaintiff reported she had been steadily improving, Tr. 1156. In October 2018,
17 Plaintiff reported her symptoms were stable, Tr. 24 (citing Tr. 1196), and in
18 January 2019, Plaintiff reported no worsening of her neuropathy and stated
19 medications helped, Tr. 24 (citing Tr. 1185, 1190). In January 2020, Plaintiff
20

1 reported ongoing pain in her hands and feet, but stated it was not as severe as it had
2 previously been. Tr. 25 (citing Tr. 1265).

3 The ALJ also found Plaintiff's Wernicke-Korsakoff syndrome symptoms
4 improved with treatment. Tr. 24. Plaintiff was hospitalized in August 2017, and
5 was treated with thiamine and occupational therapy, and while she remained
6 confused during the hospitalization, she became more alert and interactive, and
7 was discharged in September 2017. *Id.* (citing Tr. 378, 781). During the
8 hospitalization, Plaintiff had significant confusion, disorientation, and general
9 neurologic deficits. Tr. 378, 380, 385, 411. Plaintiff was discharged in September
10 2017 with a requirement for 24/7 at home care. Tr. 778. In October 2017, Plaintiff
11 reported improvement in her memory, though her memory was still labeled as
12 "poor," and she was more interactive, Tr. 24 (citing Tr. 1108), and the next month
13 her speech was more coherent, and she was able to answer questions, though she
14 still had a poor memory and repeatedly asked the same questions, Tr. 24, 1120,
15 1122. In December 2017, Plaintiff was alert and oriented. Tr. 1151.

16 In August 2018, Plaintiff attended a psychological consultative examination.
17 Tr. 26, 1169-74. Plaintiff was oriented to the month, year and day, but not the
18 date, her long-term memory was "good," though she was not aware of recent
19 events, she recalled three out of three objects immediately but zero after five
20 minutes, she could not perform serial sevens, and performed serial threes slowly,

1 she was able to spell “world” both forward and backward, was able to repeat digits
2 forward and backward, and performed Trails A with no errors and one error with
3 Trails B. Tr. 1172-73. In September 2018, a provider noted Plaintiff’s “memory is
4 very poor,” although she had normal mood, affect, behavior, judgment, and
5 thoughts and there is no reference to any memory testing performed. Tr. 1155,
6 1159. The ALJ noted Plaintiff had multiple normal mental status examinations in
7 2019, and while Plaintiff and her provider noted significant memory deficits at that
8 time, the normal mental statuses state Plaintiff had normal mood, affect, behavior,
9 judgment, and thoughts; the examinations make no mention of any memory
10 testing. Tr. 25, 1185, 1188-89, 1246, 1250-51.

11 At a July 2019 psychological examination, Plaintiff was oriented, and had
12 normal immediate memory, but recalled zero items after a five-minute delay, could
13 not answer three of the fund of knowledge questions, spelled “world” correctly
14 forward and backward, followed a three-step instruction, and reported she could
15 not perform a multiplication problem. Tr. 1235. Plaintiff’s memory testing placed
16 her below the first percentile of individuals in her age group, but the validity scores
17 indicated her test results were unlikely to be a valid reflection of her functioning,
18 and she demonstrated a “higher than expected rate of forgetting.” Tr. 1236-38. In
19 January 2020, the provider noted, “No changes with memory, chronic and
20 persistent,” Plaintiff looked to her significant other to answer many questions for

1 her, due to her poor memory, and they reported ongoing memory issues, including
2 needing to use a whiteboard to help her remember things, Tr. 1265, and Plaintiff
3 again was alert and oriented, and had normal mood, affect, behavior,
4 judgment/thoughts, but there is no mention of memory testing, Tr. 1270.

5 Plaintiff argues the ALJ erred in rejecting her memory complaints and notes
6 her provider opined Plaintiff is unable to work. ECF No. 16 at 16. However,
7 while Plaintiff offers a different interpretation of the evidence, the ALJ's finding
8 that Plaintiff's symptoms improved with time is supported by substantial evidence.
9 Despite notes that Plaintiff had ongoing memory loss, there is minimal objective
10 evidence to corroborate the memory loss. The 2018 testing demonstrated
11 Plaintiff's memory had significantly improved from her 2017 functioning, and the
12 2019 testing demonstrated some improvement, with some evidence of symptom
13 exaggeration discussed further *infra*. Further, Plaintiff does not challenge the
14 ALJ's rejection of the medical opinions. On this record, the ALJ reasonably found
15 that Plaintiff's symptoms, when treated, were not as severe as alleged. This was a
16 clear and convincing reason to reject Plaintiff's symptom claims.

17 *2. Symptom Exaggeration*

18 The ALJ found Plaintiff exaggerated her impaired memory. Tr. 25. The
19 tendency to exaggerate provided a permissible reason for discounting Plaintiff's
20 reported symptoms. *Tonapetyan v. Halter*, 242 F.3d 1144, 1148 (9th Cir. 2001)

1 (The ALJ appropriately considered Plaintiff's tendency to exaggerate when
2 assessing Plaintiff's credibility, which was shown in a doctor's observation that
3 Plaintiff was uncooperative during cognitive testing but was "much better" when
4 giving reasons for being unable to work.). Moreover, in evaluating symptom
5 claims, the ALJ may utilize ordinary evidence-evaluation techniques, such as
6 considering prior inconsistent statements. *Smolen v. Chater*, 80 F.3d 1273, 1284
7 (9th Cir. 1996).

8 The ALJ found Plaintiff may not have answered the questions in a forthright
9 manner at the July 2019 psychological examination. Tr. 25. It was consistently
10 noted that Plaintiff had a higher-than-expected degree of forgetting. *Id.* While
11 Plaintiff's memory testing would have suggested her memory was worse than 99.9
12 percent of the population, Plaintiff was able to answer questions, was fully
13 oriented, and was able to perform multiple tasks correctly, including performing a
14 three-step command. Tr. 25, 1234-35. The personality assessment inventory
15 (PAI) results indicated that Plaintiff's test results are unlikely to be a valid
16 reflection of Plaintiff's functioning. Tr. 26, 1236. Plaintiff argues there is no
17 evidence of exaggeration because Dr. Genthe stated Plaintiff was cooperative and
18 genuine in her answers, and Plaintiff argues the ALJ relied on a computer analysis
19 of the test scores. ECF No. 16 at 16. However, the ALJ's interpretation of the
20 evidence in finding inconsistencies in the examination results, and the

1 consideration of the PAI results, is reasonable. This was a clear and convincing
2 reason, supported by substantial evidence, to reject Plaintiff's symptom claims.

3 3. *Activities of Daily Living*

4 The ALJ found Plaintiff's symptom claims were inconsistent with her
5 activities of daily living. Tr. 25. The ALJ may consider a claimant's activities that
6 undermine reported symptoms. *Rollins v. Massanari*, 261 F.3d 853, 857 (9th Cir.
7 2001). If a claimant can spend a substantial part of the day engaged in pursuits
8 involving the performance of exertional or non-exertional functions, the ALJ may
9 find these activities inconsistent with the reported disabling symptoms. *Fair v.*
10 *Bowen*, 885 F.2d 597, 603 (9th Cir. 1989); *Molina*, 674 F.3d at 1113. "While a
11 claimant need not vegetate in a dark room in order to be eligible for benefits, the
12 ALJ may discount a claimant's symptom claims when the claimant reports
13 participation in everyday activities indicating capacities that are transferable to a
14 work setting" or when activities "contradict claims of a totally debilitating
15 impairment." *Molina*, 674 F.3d at 1112-13.

16 While Plaintiff has generally reported no improvement in her memory loss,
17 the ALJ found Plaintiff's ability to complete her personal care, activities of daily
18 living, and schedule her own appointments, was inconsistent with her allegations.
19 Tr. 25. Plaintiff reported in 2018 and in 2019 that she did not need assistance with
20 her personal care or household chores, that she could cook simple meals, visit

1 others, grocery shop every two weeks, and she was able to handle her own funds
2 and pay bills. Tr. 22, 1172-73, 1230-31. Plaintiff's significant other reported
3 Plaintiff was able to perform small tasks around the house by herself, such as her
4 personal care, sweeping, helping with dishes, using her phone, and preparing meals
5 in the microwave, and she assists with walking the dog and shopping, although she
6 sometimes forgets what she has completed and has pain with continued use of her
7 hands. Tr. 27, 62, 64, 263-64, 280. Plaintiff's significant other also reported
8 Plaintiff does not need reminders to handle her personal care, and she is able to go
9 out alone. Tr. 281-82. On this record, the ALJ reasonably concluded that
10 Plaintiff's activities of daily living were inconsistent with her symptom claims.
11 This finding is supported by substantial evidence and was a clear and convincing
12 reason to discount Plaintiff's symptom complaints.

13 **B. RFC**

14 Plaintiff faults the ALJ for not incorporating her neuropathy-related
15 restrictions into the RFC. ECF No. 16 at 17-18. At step four of the sequential
16 evaluation, the ALJ must determine the claimant's RFC. 20 C.F.R. §§
17 416.920(a)(4)(iv), 404.1520(a)(4)(iv). “[T]he ALJ is responsible for translating
18 and incorporating clinical findings into a succinct RFC.” *Rounds v. Comm'r Soc.*
19 *Sec. Admin.*, 807 F.3d 996, 1006 (9th Cir. 2015). “[A]n ALJ’s assessment of a
20 claimant adequately captures restrictions related to concentration, persistence, or

1 pace where the assessment is consistent with restrictions identified in the medical
2 testimony.” *Stubbs-Danielson v. Astrue*, 539 F.3d 1169, 1174 (9th Cir. 2008). To
3 the extent the evidence could be interpreted differently, it is the role of the ALJ to
4 resolve conflicts and ambiguity in the evidence. *Morgan v. Comm'r Soc. Sec.*
5 *Admin.*, 169 F.3d 595, 599-600 (9th Cir. 1999). Where evidence is subject to more
6 than one rational interpretation, the ALJ’s conclusion will be upheld. *Burch v.*
7 *Barnhart*, 400 F.3d 676, 679 (9th Cir. 2005); *Hill*, 698 F.3d at 1158 (recognizing
8 the court only disturbs the ALJ’s findings if they are not supported by substantial
9 evidence).

10 Plaintiff argues the ALJ failed to account for her limitations regarding “her
11 pain from hands and feet neuropathy,” and her “limited ability to stand and/or walk
12 for extended periods of time.” ECF No. 16 at 17. Plaintiff contends the ALJ
13 should have limited her to sedentary work with additional limitations, including a
14 limitation to account for her reduced capacity for being on-task. *Id.* However,
15 Plaintiff does not point to any specific evidence of limitations caused by her
16 neuropathy or evidence of neurocognitive limitations that the ALJ improperly
17 rejected. Plaintiff does not point to any specific opinions to support her arguments
18 and does not challenge the ALJ’s reasons for rejecting the medical opinion
19 evidence, and the ALJ’s rejection of Plaintiff’s symptom claims was supported by
20 substantial evidence. Defendant argues the ALJ was not required to incorporate

1 properly rejected evidence into the RFC. ECF No. 18 at 12. The Court agrees
2 with Defendant's analysis.

3 Plaintiff further argues she should have been limited to sedentary work,
4 given the limitation to standing/walking no more than two hours in a day. ECF
5 No. 17 at 17. The ALJ limited Plaintiff to light work, with a limitation to
6 standing/walking a maximum of two hours per day. Tr. 23. The vocational expert
7 was asked if an individual with a light RFC, with the two-hour stand/walk
8 limitation, among other limitations, would be able to perform work that exists in
9 the national economy, and the expert gave multiple jobs, as reflected in the ALJ's
10 decision. Tr. 29, 69-70. The expert also testified that even if the RFC was a
11 sedentary RFC, there were multiple positions that could be performed with a
12 sedentary RFC with the additional limitations. Tr. 70-71. As such, any error in
13 labeling the RFC a light RFC rather than a sedentary RFC is harmless. *See*
14 *Molina*, 674 F.3d at 1115.

15 **CONCLUSION**

16 Having reviewed the record and the ALJ's findings, the Court concludes the
17 ALJ's decision is supported by substantial evidence and free of harmful legal error.
18 Accordingly, **IT IS HEREBY ORDERED:**

19 1. The District Court Executive is directed to substitute Kilolo Kijakazi as
20 Defendant and update the docket sheet.

2. Plaintiff's Motion for Summary Judgment, ECF No. 16, is DENIED.

3. Defendant's Motion for Summary Judgment, ECF No. 18, is

GRANTED.

4. The Clerk's Office shall enter **JUDGMENT** in favor of Defendant.

The District Court Executive is directed to file this Order, provide copies to counsel, and **CLOSE THE FILE.**

DATED August 24, 2021.

s/Mary K. Dimke

MARY K. DIMKE

UNITED STATES MAGISTRATE JUDGE

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